HANSON BRIDGETT LLP
KURT A. FRANKLIN, SBN 172715
kfranklin@hansonbridgett.com
LISA M. POOLEY, SBN 168737
lpooley@hansonbridgett.com
SAMANTHA WOLFF, SBN 240280
swolff@hansonbridgett.com
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366

HANSON BRIDGETT LLP
TYSON M. SHOWER, SBN 190375
tshower@hansonbridgett.com
LANDON D. BAILEY, SBN 240236
lbailey@hansonbridgett.com
500 Capitol Mall, Suite 1500
Sacramento, California 95814
Telephone: (916) 442-3333
Facsimile: (916) 442-2348

OTTEN LAW, PC
VICTOR OTTEN, SBN 165800
vic@ottenlawpc.com
KAVITA TEKCHANDANI, SBN 234873
kavita@ottenlawpc.com
3620 Pacific Coast Highway, #100
Torrance, California 90505
Telephone: (310) 378-8533
Facsimile: (310) 347-4225

Attorneys for Plaintiffs
CORY SPENCER, DIANA MILENA REED, and COASTAL PROTECTION RANGERS, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CORY SPENCER, an individual; DIANA MILENA REED, an individual; and COASTAL PROTECTION RANGERS, INC., a California non-profit public benefit corporation,

Plaintiffs,

v.

CASE NO. 2:16-cv-02129-SJO (RAOx)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR MONETARY SANCTIONS AGAINST CHARLIE FERRARA, FRANK FERRARA AND THEIR COUNSEL OF RECORD BREMER WHYTE BROWN & O'MEARA

Filed concurrently with Notice of

LUNADA BAY BOYS; THE INDIVIDUAL MEMBERS OF THE LUNADA BAY BOYS, including but not limited to SANG LEE, BRANT BLAKEMAN, ALAN JOHNSTON AKA JALIAN JOHNSTON, MICHAEL RAE PAPAYANS, ANGELO FERRARA, FRANK FERRARA, CHARLIE FERRARA, and N. F.; CITY OF PALOS VERDES ESTATES; CHIEF OF POLICE JEFF KEPLEY, in his representative capacity; and DOES 1-10,

Defendants.

Motion and Motion; Declaration of Samantha D. Wolff and [Proposed Order]

Judge: Hon. Rozella A. Oliver
Date: August 23, 2017
Time: 10:00 a.m.
Crtrm.: F

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. INTRODUCTION

Since the onset of discovery in November 2016, Defendants Charlie and Frank Ferrara (collectively, "Defendants"), along with their counsel at Bremer Whyte Brown & O'Meara ("Defendants' counsel"), failed to perform due diligence when responding to discovery, were untruthful in response to discovery requests, withheld evidence in violation of the Federal Rules of Civil Procedure and this Court's Order, and destroyed critical evidence. Defendants' and their counsel's obstructive conduct warrants the imposition of sanctions to compensate Plaintiffs for their time and effort to obtain the discovery to which they are entitled and to discipline Defendants for destroying critical (and likely incriminating) evidence.

Defendants initially concealed the existence of responsive information by refusing production of relevant cell phone bills and denying possession of any text messages with co-Defendants. Notably, however, Defendants' cell phones were not searched until approximately eight months later. That Defendants' counsel could respond to the discovery requests on behalf of their clients and proclaim that no responsive information existed, having never required their clients to search or image their cell phones, is astonishing. Were it not for a co-Defendants' privilege log, which lists numerous communications between Defendants and Sang Lee, Plaintiffs might not have discovered Defendants' deceptive conduct and this relevant evidence.

After learning of the existence of this responsive information, Plaintiffs communicated with Defendants' counsel approximately a dozen times over *seven* months. Plaintiffs finally sought this Court's assistance and, despite a Court order requiring the production of responsive information within several days' time, Frank Ferrara untimely produced incomplete records and Charlie Ferrara failed to produce *any* cell phone data in violation of the Court's order. It was only after a second Court hearing that Charlie Ferrara finally produced his (heavily redacted) cell phone records – two days after filing his summary-judgment motion.

Perhaps most disconcerting is Defendants' spoliation of critical evidence. Despite Defendants' obligation to preserve evidence at the outset of litigation in the Spring of 2016, and even after receiving Plaintiffs' discovery requests in November 2016, Defendants did not attempt to preserve or obtain their cell phone data and bills until July 2017. By ignoring their discovery obligations for so many months, critical evidence was destroyed and, conveniently, Defendants are now unable to obtain records from the most pertinent time period in this matter. Had Defendants and their counsel properly or diligently responded to Plaintiffs' discovery requests at the time they were served – or even at some point during the seven months of meet and confer discussions that followed – they would have been able to obtain the records for the critical time period.

Defendants' and their counsel's disregard for the rules of discovery and disobedience of this Court's Order constitute sanctionable conduct. Plaintiffs ask the Court to issue monetary sanctions against Defendants and their counsel at Bremer Whyte.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural Background

On March 29, 2016, Plaintiffs filed a class action lawsuit against a group of defendants for their participation in unlawful gang activity perpetuated on outsiders who dared to venture to Lunada Bay. *See* Complaint, ECF No.1. Defendants Charlie and Frank Ferrara were served with the Complaint in July 2016 and they each filed an answer on September 2, 2016. *See* Proof of Service, ECF No. 115 and Answer to Complaint, ECF Nos. 124, 125. However, Frank Ferrara – the self-designated original "protector" of Lunada Bay – was aware of this action well before he was served: he was quoted in a Daily Breeze article denying the allegations in this case on April 7, 2016. Wolff Decl., Ex. 1.

/ / /

/ / /

B. Plaintiffs Served Document Requests in November 2016; Defendants' Responses Were Untruthful.

On November 16, 2016, Plaintiffs propounded requests for production of documents on Charlie and Frank Ferrara. Wolff Decl., Exs. 2 & 3. Among other items, the requests sought copies of Charlie and Frank Ferrara's cell phone bills from January 1, 2013 to present, text messages with surfers who regularly surf Lunada Bay, and text messages or records of phone calls with a co-defendant. *Id.* at Req. Nos. 5 (text messages with surfers who regularly surf Lunada Bay), 7 (text messages or phone calls with a co-defendant), 40 (cell phone bills since January 1, 2013). In their responses, Defendants' counsel attested to the fact that Defendants had no responsive text messages or records of phone calls and asserted that Plaintiffs' request for their cell phone bills was too burdensome. Not a single document was produced in response to Plaintiffs' 46 document requests. Wolff Decl. ¶ 4, Exs. 4 & 5.

At the same time, Defendant Sang Lee responded to nearly-identical document requests seeking text messages or records of phone calls with a co-defendant and produced a privilege log evidencing numerous communications (including text messages and phone calls) between and among Defendants Charlie Ferrara, Frank Ferrara, and Sang Lee. Wolff Decl., Ex. 6 at p. 4, 13, 14.

C. Plaintiffs' Counsel Engaged in a Seven-Months' Long Meet-and-Confer Process with Defendants' Counsel to No Avail.

Beginning on January 24, 2017, Plaintiffs' counsel began meeting and conferring with counsel for Defendants regarding Defendants' failure to produce any responsive documents. Wolff Decl., ¶ 6 & Ex. 7. Plaintiffs' counsel pressed Defendants' counsel on the production of these responsive and relevant documents on at least a dozen occasions from January 24, 2017 to July 25, 2017:

- January 24, 2017: Email to Defendants' Counsel (Ex. 7)
- February 1, 2017: Email from Defendants' Counsel (Ex. 8)

- February 8, 2017: Email to Defendants' Counsel (Ex. 9)
- February 10, 2017: Email to Defendants' Counsel (Ex. 10)
- March 1, 2017: Email correspondence with Defendants' Counsel (Ex. 11)
- April 14, 2017: Email to Defendants' Counsel (Ex. 12)
- April 17, 2017: Email exchange with Defendants' Counsel (Ex. 13)
- April 21, 2017: Telephonic discussion with Defendants' Counsel (Wolff Decl. ¶ 13)
- May 1, 2017: Email to Defendants' Counsel (Ex. 14)
- June 27, 2017: Letter to Defendants' Counsel (Ex. 15)
- July 3, 2017: Telephonic discussion with Defendants' Counsel (Wolff Decl. ¶ 15)
- July 10, 2017: Email exchange with Defendants' Counsel (Ex. 17)
- July 11, 2017: Email to Defendants' Counsel (Ex. 18)
- July 12, 2017: Call and email with Defendants' Counsel (Wolff Decl. ¶ 19, Ex. 19)
- July 18, 2017: Letter to Defendants' Counsel (Ex. 20)
- July 24, 2017: Telephonic discussion with Defendants' Counsel (Wolff Decl. ¶ 24)
- July 25, 2017: Email to Defendants' Counsel (Ex. 25)

During these discussions and email exchanges, Defendants' counsel stated that they would "inquire into imaging" their clients' phones and were "working on" obtaining the documents. Wolff Decl., Exs. 20 (July 10 email) & 11 (March 1 email).

D. Defendants and Their Counsel Failed to Preserve Relevant Evidence and Produced Documents Late, in Violation of this Court's Order.

It became clear in early July 2017 that Defendants and their counsel never intended to produce documents, had not made any effort to gather responsive documents, and had not even taken steps to preserve responsive information. For

instance, during a July 3, 2017 telephonic discussion between counsel for Plaintiffs and counsel for Defendants, Defendants' counsel stated that she would see if her clients could obtain copies of their cell phone bills online (in other words, they had not yet tried). Decl. Wolff, ¶ 15. Defendants' counsel also admitted that her office had not taken any steps to preserve the data on Defendants' cell phones.[1] *Id.* Indeed, Defendants' counsel indicated that she was not even sure if her clients' text messages still existed. *Id.* Defendants' counsel's statements were consistent with her client's testimony four days later during his July 7, 2017 deposition, when Charlie Ferrara stated that he had not taken any steps to preserve his data. Wolff Decl. Ex. 16 at 172:25-173:4. He further declared that he "ha[d]n't tried very hard" to obtain his cell phone bills. *Id.* at 165:6-7. Defendant Charlie Ferrara's cavalier attitude toward discovery was encouraged by his counsel's obstreperous conduct at his deposition, where both Defendants' counsel and her client laughed on the record at various times in response to serious questions. *Id.* at 55:6-59:1.

On July 10, 2017, having received no responsive documents or further correspondence from Defendants' counsel, Plaintiffs' counsel sought relief from the Court. Wolff Decl. ¶ 17. A telephonic hearing was held on July 13, 2017, at which time Defendants' counsel admitted her office still had not imaged Defendants' cell phones. Wolff Decl., ¶ 20. This Court ordered Charlie and Frank Ferrara to produce responsive documents (including those obtained from an imaging of their

[1] Counsel for Defendants, Tiffany Bacon, stated at the July 26, 2017 hearing that "I know that as soon as Ms. Wolff reached out to me – I believe it was in June of this year – to follow up on the discovery requests, I immediately discussed this issue with my clients. And I know that they began efforts then." Decl. Wolff, Ex. 23 at 13:4-7. However, Ms. Wolff first communicated with Ms. Bacon on April 14, 2017 (though Ms. Wolff had communicated with Ms. Bacon's office on this same issue since January 2017). *Id.*, Ex. 12. And as of July 3, 2017, Defendants' counsel still had not made any effort to image their clients' cell phones or access their clients' cell phone bills online. Decl. Wolff, ¶ 15.

cell phones and their cell phone bills) by 5:00 p.m. on July 17, 2017. Minute Order, 7/13/17, Docket No. 267.

Defendants did not abide by the Court's Order. First, their production was late. After 5:00 p.m. on July 17, 2017, Plaintiffs received a *partial* production from Defendants. Wolff Decl. ¶ 21. Plaintiffs then received another *partial* production late on July 21, 2017, four days after the Court-ordered deadline. Wolff Decl. ¶ 23.

Second, Defendants redacted the vast majority of the documents they produced, even though they never asserted any privilege in response to the initial document requests. Wolff Decl. ¶ 21. To make matters worse, Defendants also failed to provide a privilege log, which would have allowed Plaintiffs to assess the validity of the redactions made. *Id*.

Third, Defendants' production was incomplete in three significant ways. They produced their cell phone bills dating back only to February 21, 2016, even though Plaintiffs' requests sought bills dating from January 1, 2013, and despite Defendants being well aware that relevant events occurred prior to February 21, 2016 – including a Bay Boy attack on the Plaintiffs on January 29, 2016, and the sexual harassment of Diana Reed (in which Charlie Ferrara participated by attendance) on February 13, 2016. Wolff Decl. ¶ 21, Ex. 20. Additionally, Defendants failed to produce *any* text messages between Charlie Ferrara and/or Frank Ferrara and co-defendant Mr. Lee. Wolff Decl. ¶ 21, Ex. 20. Finally, neither belated production contained any of Charlie Ferrara's cell phone data or text messages, despite the Court's Order and Defendants' counsel's initial assurance that it did. *See* Wolff Decl. ¶¶ 21, 22, Ex. 21.

When Plaintiffs' counsel inquired about the missing data on July 24, 2017, Defendants' counsel admitted that Charlie Ferrara's data had not been produced. Wolff Decl. ¶ 24. She claimed the failure was due to the extraction report being voluminous, which was taking her a long time to go through. *Id*. Indeed, Defendants' counsel repeated this excuse to the Court two days later at the July 26,

2017 hearing, and although she made conflicting statements about the relevance of this information, she ultimately admitted that she had failed to comply with the Court's order:

> MS. BACON: I produced responsive information pursuant to the Court's Order. I could not produce Charlie Ferrara's report because it was simply not ready. And there was information in there that is not responsive to the request . . .
>
> THE COURT: . . . I could be mistaken but my recollection is that there was an order to produce this information on Monday, July 17th.
>
> MS BACON: There was an order to produce responsive information, which is precisely what I did.
>
> THE COURT: So, then what are you producing today?
>
> MS. BACON: That is additional responsive information.
>
> THE COURT: Okay. Where did that come from?
>
> MS. BACON: From the extraction reports . . .
>
> MS. BACON: I produced responsive information pursuant to the court's order. I don't recall that the Court's order said I was required to produce all responsive information.
>
> (Brief Pause.)
>
> MS. BACON: I understand. I understand, Your Honor. I produced responsive information on the day that it was – the order to be produced.
>
> THE COURT: You just chose not to produce all of it.

Wolff Decl., Ex. 23 at 15:20-23, 16:3-12, 16:24-17:7. Ultimately, Charlie Ferrara produced his heavily-redacted cell phone data following the Court hearing on July 26, 2017 at the Court's urging.

E. Defendants Now Seek to Unfairly Benefit from their Discovery Abuses by Seeking Summary Judgment.

On July 24, 2017 – just three days after Frank Ferrara's second document production and two days before Charlie Ferrara produced *any* documents –

Defendants filed motions for summary judgment, arguing that Plaintiffs' claims against them should fail for lack of evidence. Docket Nos. 285, 286. Specifically, Defendants asserted that there is "a complete dearth of any facts" demonstrating Charlie or Frank's involvement in acts or omissions supporting Plaintiffs' claims. Docket Nos. 285-5 at 2:20-22 & 286-1 at 2:20-22.

Plaintiffs filed a motion under Federal Rule of Civil Procedure 56(d) on August 8, 2017, seeking relief from Defendants' summary-judgment motions based on their history of withholding evidence. Docket No. 397.

F. Plaintiffs Have Expended Significant Resources Pursuing Discovery from Charlie and Frank Ferrara.

Plaintiffs' counsel, Hanson Bridgett LLP and Otten Law, PC, have been representing Plaintiffs in this matter on a *pro bono* basis. Wolff Decl., ¶ 27. Defendants' refusal to comply with basic discovery rules and ethical obligations has forced Plaintiffs' counsel to incur significant expense in this matter. In total, counsel has expended 66.1 hours at a cost of $30,562.50 pursuing a complete production of documents from Charlie and Frank, including through meet and confer efforts, telephonic hearings with this Court, and preparing this instant motion. Wolff Decl. ¶ 27 & Ex. 24. Plaintiffs anticipate devoting an additional three hours at a cost of $1,575 to this matter for preparation and attendance at the hearing before this Court on August 23, 2017. Wolff Decl. ¶ 28. In total, Plaintiffs seek **$32,137.50** in sanctions against Defendants and their counsel at Bremer Whyte.

III. LEGAL STANDARD

The Court is empowered to issue sanctions on a party and/or the party's attorney under Federal Rule of Civil Procedure 37, Central District Local Rule 83-7, and the Court's inherent power to manage its affairs. The Court's power to award sanctions for the destruction or spoliation of evidence is inherent and discretionary. *Glover v. BIC Corp.*, 6 F.3d 1318, 1329 (9th Cir. 1993); *In re Napster, Inc. Copyright Litigation*, 462 F. Supp. 2d 1060, 1066 (N.D. Cal. 2006). In evaluating a

party's request for sanctions for spoliation of evidence, courts generally apply the following three-party test: (1) whether the party having control over the evidence was obligated to preserve it when it was destroyed or altered; (2) whether the destruction or loss was accompanied by a culpable state of mind; and (3) whether the evidence that was destroyed was relevant to the claims or defenses of the party seeking discovery of the spoliated evidence. *Zublake v. UBS Warburg LLD*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003); *Montoya v. Orange County Sheriff's Dep't.*, 2013 WL 6705992 *7, Case No. SACV 11-1922 JGB (RNBx) (C.D. Cal. Oct. 15, 2013). If the court finds that spoliation occurred, it is tasked with imposing sanctions "commensurate to the spoliating party's motive or degree of fault in destroying the evidence." *Apple, Inc. v. Samsung Electronics Co.*, 888 F. Supp. 2d 976, 992 (N.D. Cal. 2012).

Additionally, a party is entitled to an award of attorneys' fees where the opposing party fails to obey a discovery order. Fed. R. Civ. P. 37(b)(2)(C).

Here, Defendants and their counsel engaged in egregious conduct which necessitated one Court Order and two hearings (after Defendants' counsel disobeyed the initial Order) and also resulted in the destruction of critical evidence. Such conduct warrants the imposition of sanctions, as explained below.

IV. ARGUMENT

A. Defendants' and Their Counsel's Willful Spoliation of Evidence Warrants the Imposition of Severe Sanctions.

Application of the three-part *Zublake* test supports this Court's imposition of severe sanctions against Defendants and their Counsel. A defendant's duty to preserve evidence arises as soon as litigation is "reasonably anticipated." *Apple, Inc.*, 881 F. Supp. 2d at 1136. Indeed, "the duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation." *Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001).

Here, Defendants' obligation to preserve evidence incepted – at the latest – on July 26, 2016, when they were served in this matter. *See* Docket No. 91. More likely, at least for Frank, his obligation to preserve evidence arose when the lawsuit was filed, and certainly – no later than April 7, 2016, when he was quoted in a Daily Breeze speaking out against this lawsuit. Wolff Decl., Ex. 1. The Complaint includes allegations that, *inter alia*, the Defendants engaged in a conspiracy to exclude outsiders and that they "coordinate their efforts [through] . . . use of cell phones." Compl. ¶ 47 [Docket No. 1]; *see also id.*, ¶ 59 ("Defendants, individually, collectively, and in concert proclaim their ownership of the Lunada Bay area by coordinating their efforts to prevent public access by using . . . cell phones."). These allegations should have alerted Defendants that their cell phone data would be relevant to this matter and they should have taken steps to preserve their data at that time.

Defendants' Counsel has represented that the Defendants' cell phone carrier's retention policy is to preserve the most recent 18 months' worth of cell phone bills. *See* Wolff Decl., Ex. 23 at 7:2-4. Thus, Defendants' cell phone records are routinely destroyed on an ongoing basis, unless affirmative efforts are made to preserve their bills. Here, Defendants made no efforts to obtain their cell phone bills until July 2017. By waiting *over a year* to obtain and preserve relevant evidence, Defendants knowingly permitted (and caused) the destruction of critical evidence. Most notably, Defendants' bill containing evidence of their cell phone activity during the time period that is most relevant to this case – January 29, 2016 through February 13, 2016 – could have been preserved had Defendants not chosen to ignore their evidence preservation obligation. Indeed, the cell phone bill containing this relevant time period likely was not destroyed until June 2017. Thus, the first prong of the *Zublake* test – Defendants' control over the evidence at the time of its destruction – is easily satisfied here.

Second, it is clear the Defendants and their counsel acted with a culpable state

of mind. Bad faith is not required to prove this element; rather, mere negligence or a "conscious disregard" suffices. *Cobb v. BSH Home Appliances Corp.*, 2014 WL 12591841 *3, Case No. SACV 10-0711 DOC (ANx) (C.D. Cal. Sept. 22, 2014). Here, Defendants' conduct amounts to negligence at best and more likely constitutes bad faith. Defendants' failure to preserve this relevant evidence at the outset of litigation may have been merely negligent. Their continued failure (and refusal), however, to do so after Plaintiffs' November 2016 discovery requests and repeated and consistent meet and confer efforts that followed demonstrate bad faith. Defendants' conduct is made more egregious by the fact that responsive documents did exist at the time Plaintiffs initially requested them, despite Defendants' (and their counsel's) representations to the contrary. But Plaintiffs' counsel's persistent requests for this information went ignored, all while critical evidence was being destroyed. Defendants' and their counsel's blatant disregard of their discovery obligations demonstrates a culpable state of mind. *See Zublake*, 220 F.R.D. at 216.

Finally, the destroyed evidence – in this case, the relevant cell phone bills – is highly relevant to Plaintiffs' claims in this matter. As indicated previously, Plaintiffs have alleged that Defendants conspired to exclude outsiders from accessing Lunada Bay through use of cell phones, among other things. The Plaintiffs in this case were assaulted and harassed by Defendants on January 29, 2016, February 5, 2016, and February 13, 2016. Yet, by the time Defendants obtained their cell phone bills, the earliest-available bill for either Defendant only dates back to February 21, 2016 – conveniently over a week after the last attack on Plaintiffs. This evidence was critical to Plaintiffs' claims and was available at the time Plaintiffs initiated this suit, at the time Plaintiffs propounded document requests, and at the time Plaintiffs engaged in a months-long meet and confer effort. *See Zublake*, 220 F.R.D. at 216.

Plaintiffs' clear satisfaction of all three *Zublake* factors establishes Plaintiffs' entitlement to sanctions as against Defendants and their counsel.

B. Defendants and their Counsel Should Similarly be Sanctioned Under Federal Rule 37(b) for their Willful Failure to Comply with this Court's July 13, 2017 Order.

Federal Rule of Civil Procedure 37 provides a host of remedies for parties aggrieved by discovery abuses. Where a party fails to obey a discovery order, this Court may impose sanctions in the form of reasonable expenses, including attorney's fees against the "disobedient party, the attorney advising that party, or both." Fed. R. Civ. P. 37(b)(2); *Wyle v. R.J. Reynolds Industries, Inc.* (9th Cir. 1983) 709 F.2d 585, 589. Central District Local Rule 83-7 similarly authorizes the imposition of sanctions on parties that fail to comply with orders of the Court. Local Rule 83-7 states:

> The violation of or failure to conform to any of these Local Rules may subject the offending party or counsel to: (a) monetary sanctions, if the Court finds that the conduct was willful, grossly negligent, or reckless; (b) the imposition of costs and attorneys' fees to opposing counsel, if the Court finds that the conduct rises to the level of bad faith and/or a willful disobedience of a court order; and/or (c) for any of the conduct specified in (a) and (b) above, such other sanctions as the Court may deem appropriate under the circumstances.

Here, Defendants and their counsel acted in bad faith or were grossly negligent in their failure to comply with this Court's July 13, 2017 order. Despite a clear order to produce her clients' cell phone data and bills, Defendants' counsel stated that she did not believe they were obligated to produce "all" such information in a timely manner. Indeed, not only were Defendants' productions untimely, but they were also grossly incomplete as they omitted Charlie Ferrara's cell phone data in its entirety. Wolff Decl. ¶¶ 23-24. When Plaintiffs' counsel met and conferred to address these (and other) deficiencies, Defendants' counsel initially advised that Charlie's data was included in the production. Wolff Decl., ¶ 22 & Ex. 21. Only several days later did Defendants' counsel acknowledge that his data was omitted, and even then attempted to excuse Charlie Ferrara's noncompliance because it was purportedly burdensome. *Id.* at ¶ 24. Yet, Defendants' counsel made absolutely no

effort to alert the Court or the Plaintiffs to this fact and failed to seek any sort of relief or extension. And most disturbing, Charlie Ferrara saw fit to file a motion for summary judgment on the grounds that there is a "dearth of evidence" demonstrating his liability while simultaneously guarding all relevant evidence in his possession in direct violation of this Court's July 13, 2017 Order.

Defendants' flagrant disregard for the Federal Rules and this Court's authority warrants the imposition of sanctions.

C. Plaintiffs Are Entitled to Recovery of their Reasonable Attorneys' Fees.

As a direct result of Defendants' disregard for standard discovery protocol and obligations, Plaintiffs have been forced to incur unnecessary and significant expenses. Plaintiffs' counsel has engaged in an ongoing meet-and-confer campaign with Defendants' counsel since January 2017. Wolff Decl. ¶¶ 6-25. Though Defendants should have produced this discovery without prompting, Plaintiffs had to send numerous emails and formal letters, participate in at least five telephone calls, prepare for and attend two Court hearings on the matter, and now prepare the instant motion. All of these efforts could have been avoided had Defendants and their counsel recognized their duty to engage in discovery in good faith and their evidence preservation obligations at the outset of this matter.

As is fully set forth and supported in Plaintiffs' Detailed Time Entry, Exhibit 24 to the Wolff Declaration, attorneys at Hanson Bridgett LLP have worked 66.1 hours since January to obtain relevant discovery from Defendants at a total cost of $30,562.50. This does not include Plaintiffs' counsel's anticipated time to prepare for and attend the hearing on this matter, which Plaintiffs' counsel estimate to be an additional three hours. Accordingly, Plaintiffs request that this Court award Plaintiffs' counsel $32,137.50 in the form of sanctions against Defendants and their counsel.

/ / /

V. CONCLUSION

Plaintiffs brought this matter in federal court, in part, because of the professionalism and decorum of counsel that regularly practice in federal court – and because of the clear no-gamesmanship-shall-be-tolerated discovery rules, including document preservation obligations. But here, Defendants and their counsel have withheld and destroyed critical evidence in this matter, refused to comply with customary obligations with respect to the preservation of evidence and cooperation in discovery, and blatantly disregarded this Court's Order. Defendants' spoliation of relevant evidence occurred with Defendants' counsel's full knowledge and complicity. Even worse, Defendants now wish to benefit from their bad acts by seeking summary judgment on the basis of a lack of evidence supporting Plaintiffs' claims against them. This egregious conduct by Defendants and their counsel must be addressed in a manner to protect federal-court practice, and discourage future misbehavior. Plaintiffs therefore respectfully ask that this Court grant Plaintiffs' Motion for Monetary Sanctions against Charlie and Frank Ferrara and their counsel at Bremer Whyte Brown & O'Meara.

DATED: August 14, 2017

Respectfully submitted,

HANSON BRIDGETT LLP

By: */s/ Samantha Wolff*

KURT A. FRANKLIN
LISA M. POOLEY
SAMANTHA D. WOLFF
TYSON M. SHOWER
LANDON D. BAILEY
Attorneys for Plaintiffs
CORY SPENCER, DIANA MILENA REED, and COASTAL PROTECTION RANGERS, INC.